EXPLANATORY MEMORANDUM TO

THE STATE PENSION AND OCCUPATIONAL PENSION SCHEMES (MISCELLANEOUS AMENDMENTS) REGULATIONS 2016

2016 No. [XXXX]

AND

THE PENSIONS ACT 2014 (CONSEQUENTIAL AND SUPPLEMENTARY AMENDMENTS) ORDER 2016

2016 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The Pensions Act 2014[1] ("the Act") introduces a new state pension for people reaching state pension age on or after 6 April 2016. The Regulations implement further detailed features of the new state pension scheme. In particular, they:

- set out how the pension increase earned through deferring the new state pension is to be calculated where the rate of pension changes during the deferral period;
- contain the transitional arrangements for inheriting graduated retirement benefit where a person's deceased spouse or civil partner reached state pension age or died before 6 April 2016; and
- provide that a person who is an "overseas resident" is not entitled to up-rating increases, including such increases that came into effect while the person was deferring their new state pension.

2.2 The Regulations also amend regulations dealing with contracted-out occupational pension schemes to make provision in respect of survivor benefits where a guaranteed minimum pension is converted into ordinary scheme benefits.

2.3 The Order makes consequential and supplementary amendments of primary legislation in connection with the introduction of the new state pension. The most significant of these relate to the calculation of a state pension under the pre-2016 scheme for a widowed person who reached pensionable age before 6 April 2016 but whose deceased spouse or civil partner was in the new state pension.

[1] All the legislation referred to in this Memorandum is available online at http://www.legislation.gov.uk/

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Regulation 6 is made as a result of a procedural error in the Occupational Pension Schemes (Schemes that were Contracted-out) Regulations 2015 (S.I. 2015/1452) which were laid on 16 July 2015.

3.2 Regulation 28 of those regulations, which replaced regulation 69B of the Occupational Pension Schemes (Contracting-out) Regulations 1996, and the provision in regulation 32 that revoked regulation 69B, were made under section 24B(5) of the Pension Schemes Act 1993. They should, therefore, have been made only after a draft of the regulations had been approved by a resolution of each House of Parliament, in accordance with section 186(3)(a) of that Act. These were the only provisions in S.I. 2015/1452 subject to the "affirmative" procedure and this requirement was overlooked when the regulations were made.

3.3 This error has now been rectified. S.I. 2015/1452 was revoked, except for regulation 28 and the related provision at regulation 32, and replaced on 16 September by the Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015 (S.I. 2016/1677) minus the aforementioned provisions. The provisions which were in regulation 28 are inserted as new regulation 27A by regulation 6 of these Regulations. Regulation 6 also revokes regulation 28 and the associated revocation in regulation 32. S.I. 2015/1452 and S.I. 2015/1677 were considered by the Joint Committee on 14 October and were listed as not reported in the fifth report of session 2015/16.

Other matters of interest to the House of Commons

3.4 Disregarding minor or consequential changes, the territorial application of:

- the Regulations includes Scotland;
- the Order includes Scotland and Northern Ireland;

and neither is a financial instrument that relates exclusively to England, Wales and Northern Ireland.

4. Legislative Context

4.1 This is the second tranche of affirmative secondary legislation needed to support the introduction of the new state pension on 6 April 2016. The Regulations insert additional provisions into the first set of new state pension regulations (the State Pension Regulations 2015; S.I. 2015/173) so that these provisions can all be found in one set of regulations. This is the first use of the delegated powers at sections 10, 18(2) and (3) and 20 of the Act.

4.2 Schedule 12 to the Act contains consequential amendments of other Acts. The Order makes further consequential and supplementary amendments of primary legislation.

4.3 The remaining secondary legislation that will need to be in place by 6 April 2016 includes new regulations to set the start rate of the new state pension and provide for National Insurance credits for spouses and civil partners of Armed Forces personnel to cover past periods of accompanied service overseas. Further secondary legislation is also needed to existing regulations to extend provisions to do with claims, decision-making and other administrative matters to the new state pension, make other minor

consequential amendments and amend reciprocal agreements about state pensions between Great Britain and other countries.

4.4 As noted in section 3 above, the Regulations also amend the Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations. Those regulations replace the Occupational Pension Schemes (Contracting-out) Regulations 1996 to take account of the abolition of contracting-out with effect from 6 April 2016. The Explanatory Memorandum to the 2015 No.2 Regulations provides further background.

5. Extent and Territorial Application

5.1 The Regulations extend to Great Britain. The Order contains only amendments of primary legislation which have the same extent as the provisions of the Acts they amend; namely Great Britain, with the exception of the amendments of the Scotland Act 1998 and the Finance (No.2) Act 2005, which extend to the United Kingdom.

5.2 The territorial application of the amendments is the same as their extent.

5.3 Subject to the agreement of the Northern Ireland Assembly, the Department for Social Development in Northern Ireland will be making corresponding provision for Northern Ireland to the provisions which extend only to Great Britain.

6. European Convention on Human Rights

6.1 The Minister of State for Pensions, the Baroness Altmann, has made the following statement regarding Human Rights:

6.2 In my view the provisions of the State Pension and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 2016 and the Pensions Act 2014 (Consequential and Supplementary Amendments) Order 2016 are compatible with the Convention rights.

7. Policy background

What is being done and why

7.1 The policy background to the new state pension is set out in the White Paper *The single-tier pension: a simple foundation for saving* (Cm 8528)[2] and summarised in the Explanatory Memorandum to the State Pension Regulations 2015 ("the State Pension Regulations").

<u>The State Pension and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 2016</u>

Deferral of new State Pension (regulation 3)

7.2 The option to defer claiming the state pension in order to receive a higher weekly rate when it is finally claimed will continue to be available to people in the new state pension scheme.

7.3 Section 17 of the Act and regulations 10 to 12 of the State Pension Regulations set out how the increase will be calculated in a standard case where there are no changes of circumstances during the period of deferral that affect the weekly rate of state pension. The increase will be based on the weekly rate of pension the person would have been receiving immediately before the end of their deferral period, had they not

[2] https://www.gov.uk/government/publications/the-single-tier-pension-a-simple-foundation-for-saving--2

deferred. This ensures that the increase reflects any up-rating that has occurred during the deferral period, as also applies in calculating deferral increases in the pre-2016 scheme.

7.4 However, the weekly rate may change during the deferral period for a reason other than up-rating. This is most likely to arise where the person becomes entitled to an inherited amount on the death of their spouse or civil partner part-way through the deferral period. Applying the standard calculation in such cases would give the wrong result as it would reflect the inherited amount from the start of the deferral period.

7.5 New regulation 12A, inserted into the State Pension Regulations by regulation 3, modifies the standard calculation so that the increase is based on the rates of pension that would have been applicable at the different stages of the deferral period.

Inheritance of Graduated Retirement Benefit (regulations 4 and 5)

7.6 Under the pre-2016 state pension scheme, a widowed person can be entitled to a percentage of their late spouse or civil partner's additional state pension ("AP" – also known as SERPS or State Second Pension). They may similarly "inherit" half the deceased's graduated retirement benefit ("GRB"). GRB was an early form of earnings-related state pension scheme which operated between 1961 and 1975. Most people who were over 18 and employed at that time will have paid enough graduated contributions to give entitlement to some GRB, albeit of low monetary value.

7.7 The new state pension will be an individual pension based solely on a person's own National Insurance contributions. State pension based on contributions made wholly under the new scheme – i.e. for tax years 2016/17 onwards – will not be inheritable. However, there are transitional provisions in the Act which will enable a person in the new scheme to qualify for a survivor's pension based on the AP built up by their late spouse or civil partner in the pre-2016 scheme. These arrangements recognise that older couples are likely to have based their retirement plans on the expectation of AP inheritance being available to the surviving member.

7.8 The inheritable AP will be protected in full where the deceased spouse or civil partner had either died or reached state pension age before the start of the new scheme. Provided the marriage or civil partnership had begun before 6 April 2016 and the survivor would have met the entitlement conditions for the inheritable AP if the old scheme had continued, they will be paid a survivor's state pension of the equivalent amount. Where both members of the couple are in the new scheme, the survivor may inherit half of any protected payment, again, provided the marriage or civil partnership existed before 6 April 2016.[3]

7.9 The survivor's pension will be payable in addition to the survivor's own state pension, or, if they are not entitled to a state pension in their own right, it will be paid on its own. Where the person's own state pension is less than the full rate, the Act provides for the total of the person's own plus their survivor's pensions up to the full rate to be up-rated at least in line with the percentage increase in average earnings, with any balance up-rated by price inflation. (Any increase from deferring the state pension is

[3] A person's pre-2016 contributions will be recognised through the calculation of a "starting amount" which will be the higher of their state pension valued under the old rules as at 6 April 2016 and a new rules valuation assuming the new state pension had been introduced at the start of their working life. If their old rules valuation exceeds the full rate of new state pension as at 6 April 2016 the excess will be awarded as a protected payment. At April 2015 rates and illustrative new state pension rate of £151.25, a person whose pre-2016 valuation includes full basic pension (£115.95) will have a protected payment if they have more than £35.30 AP and GRB.

not included in the total and will be price up-rated in line with the existing policy on up-rating increments.)

7.10 The Act and State Pension Regulations also include provisions which enable a person to inherit a deferral payment in line with the pre-2016 rules, irrespective of when the marriage or civil partnership began, where their deceased spouse or civil partner had reached state pension age before 6 April 2016 and deferred. This will include the choice available under the pre-2016 scheme of taking either a lump-sum payment or weekly pension if the deceased died while still deferring and had deferred for at least 12 months. The rationale for preserving these inheritance provisions is that the decision to defer is likely to have been influenced by the expectation that deferral benefits would be inheritable in the event that the deferrer died first.

7.11 New Part 6 of the State Pension Regulations, inserted by regulation 4, makes the equivalent provisions for inheriting GRB as the Act makes for inheriting AP and deferral payments where the spouse or civil partner had either reached state pension age or died before the new scheme began.

7.12 Accordingly, new regulations 15 and 16 provide a survivor's pension corresponding to the GRB the person would have inherited if the pre-2016 scheme had continued. This will be payable provided the marriage or civil partnership existed before 6 April 2016. The pension will be included in the sum of the survivor's other state pension entitlements for up-rating purposes, mirroring the arrangements described at paragraph 7.9 above. For example, a person entitled to new state pension of £140 based on their own National Insurance contributions becomes entitled to survivor's pensions of £30 inheritable AP and £1.50 GRB. Their total entitlement is £171.50. The first £151.25 (2015 illustrative rate of new state pension) will be up-rated at least in line with earnings growth and the balance of £20.25 will be price up-rated.

7.13 New regulations 18 to 20 provide for the survivor to inherit a deferral payment in respect of a deceased spouse or civil partner's deferred GRB. These provisions correspond to the arrangements for inheriting a deferral payment in respect of a deferrer's main state pension, including the provisions for choosing between a weekly pension and lump-sum payment, where applicable.

7.14 The impact of these provisions will be minor, as the amounts involved will generally be small – on average, around £2.50 a week or less where the deceased is a man, and less than £1 a week where the deceased is a woman. However, excluding GRB from the transitional arrangements would be inconsistent with the approach to protecting additional state pension inheritance where the deceased is in the pre-2016 scheme, and would not offer any significant benefits in terms of administrative simplicity.

Persons abroad (regulation 4)

7.15 While the state pension has been payable world-wide since 1955, up-rating it for people who are not ordinarily resident in Great Britain is generally restricted to people who are living in another member state of the European Economic Area (EEA), Switzerland, Gibraltar or countries with which there is a reciprocal agreement that provides for up-rating. There are 16 such non-EEA countries, including the USA, Israel, Turkey and the republics of the former Yugoslavia. The agreements with Canada and New Zealand and the former agreement with Australia do not provide for up-rating: between them these three countries account for around 80% of overseas residents who do not receive up-ratings. As at September 2014, there were 1.24

million people in receipt of a state pension outside Great Britain. Of these, just under half – around 560,000 – were in countries where the state pension is not up-rated.

7.16 There are two main reasons for not paying annual up-ratings to non-residents. First, up-ratings are based on levels of earnings growth and price inflation in the UK which have no direct relevance where the pensioner is resident overseas. Second, the cost of up-rating state pensions would increase immediately by over £0.5 billion per year if all pensions in payment were increased to current levels, and would increase in future years. Successive post-war Governments have taken the view that priority should be given to those living in GB in drawing up expenditure plans for pensioner benefits.

7.17 The provisions in new Part 7 of the State Pension Regulations, inserted by regulation 4, continue the long-standing policy of not up-rating the state pension in payment to people who are "overseas residents". The term "overseas resident" is defined in section 20 of the Act as meaning a person who is not ordinarily resident in Great Britain or any other territory specified in regulations.

7.18 New regulations 21 to 23 will be subject to the various reciprocal agreements and the EU social security coordination legislation, as is the case with the regulations about overseas residents that apply to the pre-2016 scheme.[4] This has the effect of enabling up-ratings to be payable to people living in the areas covered by those arrangements notwithstanding the fact that the regulations make no express provision for them. The UK's current reciprocal agreement with Jersey and Guernsey which provides for up-rating covers the residents of all the inhabited islands except Sark. Paragraph (6) of new regulation 21 therefore has the effect of designating Sark as a territory where up-ratings can be awarded.

7.19 Paragraph (2)(a) of new regulation 21 mirrors the current mechanism that requires specific provision to be made in the Up-rating Regulations before the disapplication of the increase can be triggered.[5] This will continue to provide an additional layer of Parliamentary scrutiny to the application of the restriction on up-rating overseas.

7.20 New regulations 21 and 22 also implement a change to the way deferral is treated in the existing arrangements.

7.21 In the pre-2016 scheme, when a person who has deferred finally claims, their weekly pension is awarded at the rate in force at the date of claim i.e. the rate including any up-ratings that have come into effect during the deferral period. Their deferral benefit – their pension increase or lump-sum payment – is similarly based on the weekly rate they have deferred but with up-ratings included. This has the effect of giving a person resident in a country where the state pension is not up-rated a double benefit from deferral, as they would not have received the up-ratings had they not deferred.

7.22 This anomaly is removed for such people who defer the new state pension.[6] Any up-ratings that have come into effect during the deferral period which they would not have been entitled to if their state pension had been in payment will be ignored in the calculation of both the deferral increase and the weekly rate payable when they claim.

[4] The Social Security (Persons Abroad) Regulations 1975
[5] See, for example, regulation 3 of S.I. 2015/496
[6] The equivalent change will not be made to the legislation that governs the restrictions on up-rating overseas for pre-2016 pensioners as it would affect people who had already started to defer before the change took effect.

7.23 We estimate that around 22% of people resident overseas defer their state pension, in contrast to 7% of people in Great Britain.[7] Some of this difference may be attributable to a higher incidence of accidental deferral – i.e. people simply claiming late because they do not receive their claim invitation , and so are unaware they have any entitlement or are unsure when or how to claim it. This can happen because we are less likely to have a current address for people living overseas, particularly if they left GB many years ago. The proportion of those in "frozen rate" countries who defer is only slightly higher than those living overseas in non-frozen rate countries, which may suggest that the added benefit from deferral for the former is not a strong factor.

7.24 We have not estimated savings from ending this advantage although we would expect the sums to be relatively minor. This assessment is based on the relatively low overall numbers of overseas cases in frozen rate countries that receive an increment in the current scheme – around 131,000 cases out of the total of around 1.142m individuals (GB and overseas) receiving such an increase[8]– and the reduction in the accrual rate for deferral from the current 10.4% per year to 5.8% per year for the new state pension. The principal reason for making this change is to ensure that the deferral arrangements are applied consistently irrespective of where the deferrer is resident. It may also be noted that while people in the pre-2016 state pension scheme living overseas outside the EEA are excluded from the option to stop claiming their state pension in order to accrue a deferral payment, this exclusion will not apply to people claiming the new state pension.[9]

7.25 While there is no other change to the policy with respect to up-rating pensions overseas, the Act does not fully meet the policy objectives. Where a surviving spouse or civil partner is entitled to a survivor's pension under the provisions described at paragraph 7.8 above, the intention is that in a case where the deceased person's own state pension was not up-rated, the survivor's pension should also be based on the non-up-rated amount, in line with the way the inheritance provisions in the pre-2016 scheme operate. However, a provision in the Act has the inadvertent effect of preventing up-ratings from being disapplied in the calculation of the inherited amount.

7.26 For example, a person in receipt of new state pension is widowed in June 2019. The deceased spouse had reached state pension age in February 2012 and was entitled to £50 additional state pension. When he died this was the rate in payment as no up-ratings applied. The survivor's inherited amount is half the deceased's AP, as the deceased was a pre-2016 pensioner. The policy intention is that this should be half the AP he was entitled to – £25. However, the Act requires the inherited amount to be half of £50 increased by up-ratings from April 2012 to April 2019. This unintended effect can only be remedied by amending the Act, which we plan to do at the earliest opportunity. Once in payment, the survivor's state pension will be subject to up-rating restrictions under new Part 7 of the 2015 Regulations in the same way as the rest of their new state pension.

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[7] This estimate slightly understates the actual proportion as it is based on the number of individuals whose State Pension includes a deferral increase so does not include those who opted to take a lump-sum payment instead.
[8] September 2014 figures from Department for Work and Pensions, Information Exploitation and Security Directorate, 5% sample.
[9] Section 16(5) of the Act provides a permissive power to make regulations specifying when this option may not apply. However, in the course of developing the detail of these provisions, including the change to the treatment of deferral, it has been decided not to mirror the existing restriction in the new scheme.

7.27 Although the provision in the Act does not affect the calculation of a survivor's pension based on a deceased partner's GRB (see paragraph 7.12 above), the regulations do not currently apply the restriction on up-ratings as it would be both anomalous and complex to do so in respect of what for most people will be only a very small element of the overall inheritable payment. The regulations will therefore need to be amended to reflect the policy intention once the Act has been amended.

Conversion into other benefits: survivors' benefits (regulation 6)

7.28 Salary-related or defined benefit occupational pension schemes which were contracted-out of the additional state pension between 1978 and 1997 are required to provide scheme members with a "guaranteed minimum pension" or GMP. The GMP is broadly equivalent to the amount of additional state pension the person would have built up in the state scheme had they not been contracted out. The scheme must also provide a survivor's GMP to the member's widow, widower or surviving civil partner, subject to certain conditions. The majority of such schemes also provide benefits above the level of the GMP.

7.29 The Pensions Act 2007 introduced the facility for scheme trustees to convert GMP liabilities into ordinary scheme benefits. These provisions, which took effect in 2009, are intended to enable the scheme to provide uniformity of treatment between the converted benefits and other scheme benefits in respect of matters such as revaluation. They also enable scheme members to transfer benefits to other schemes more easily.

7.30 One of the conditions for conversion is that the converted scheme provides a survivor with benefits at least equivalent to the survivor's GMP. Regulation 69B of the Occupational Pension Schemes (Contracting-out) Regulations 1996 ("the 1996 Regulations") sets out the detailed requirements with respect to the circumstances in which such survivor benefits are to be paid and the period of payment.

7.31 As explained in paragraph 4.4 above, the 1996 Regulations are revoked and replaced by the Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015. Regulation 6 of this instrument inserts regulation 27A into those regulations which reproduces regulation 69B without substantive amendment.

<u>The Pensions Act 2014 (Consequential and Supplementary Amendments) Order 2016</u>

Amendments to do with the old state pension system

7.32 People who reach state pension age before 6 April 2016 will continue to receive their state pension under the old state pension system. A person who is widowed after the new system starts will therefore still be able to qualify for a "Category B" pension – an old state pension based on their late spouse or civil partner's National Insurance contributions. For a person widowed over pension age, a survivor's Category B pension can consist of both additional state pension (AP) and basic pension. The legislation provides for the Category B pension to be calculated in the same way as the deceased's Category A pension (an old state pension based on a person's own National Insurance contributions) but modified to reflect the inheritable proportion of AP payable to a survivor.

7.33 Where the late spouse or civil partner is in the new system (and is therefore not eligible for a Category A pension), the Category B pension will be calculated by reference to a notional rate of Category A pension. The Act amends the Category B provisions to exclude any contributions the deceased made for tax years after the old scheme closed on 5 April 2016 from the calculation. This Order makes further

consequential amendments relating to the calculation of the survivor's inheritable AP in such cases.

7.34 In order to calculate the earnings-related part of a person's AP, their earnings for past years are revalued in line with the growth in average earnings to bring them up to current values. The percentage increases to be applied to the earnings in each tax year from 1978/79 onwards to achieve this are set out in the Social Security Revaluation of Earnings Factors Order, made under section 148 of the Social Security Administration Act 1992 ("the Administration Act").[10]

7.35 From 2012/13, earnings-related accruals on earnings between the "lower earnings limit" and the "low earnings threshold" (£5,824 to £15,300 at 2015/16 rates) were replaced by a flat-rate amount.[11]

7.36 A separate Order (the Social Security Pensions (Flat Rate Accrual Amount) Order) is made each tax year under section 148AA of the Administration Act, which sets a new flat rate amount for the year (£93.60 for 2015/16, equivalent to £1.80 a week), based on the same earnings growth measure that is used for the purposes of the section 148 Order. This has the effect of revaluing the amounts for previous years. This is accompanied by a third Order under section 148A of that Act which specifies the new Low Earnings Threshold for the year. [12]

7.37 From April 2016, people will no longer accrue AP. However, for the purposes of calculating a Category B pension where the deceased spouse or civil partner was in the new state pension, the AP the deceased had accrued, including the flat-rate amounts accrued from 2012/13 to 2015/16, will still need to be revalued up to when they would, in the old scheme, have become entitled to the AP or died, if earlier.

7.38 The earnings-related part of the AP will continue to be revalued using the existing mechanism (the Revaluation of Earnings Factor Order, described in paragraph 7.34). Paragraphs (5) to (8) of Article 2 provide for the flat-rate amount of the deceased's AP to be revalued by reference to the cumulative percentage increase specified in that Order for earnings in tax year 2015/16. This has the same effect as the existing arrangements but removes the need to make a separate Order under section 148AA. Paragraph (4)(a) makes a supplementary amendment to ensure that the flat-rate amount is included in a Category B pension for widowers, surviving same-sex spouses and civil partners who reached state pension age before April 2010.[13]

7.39 There will therefore be no need to make any further Orders setting a new flat-rate accrual amount or the level of the low earnings threshold. Article 3 accordingly removes the duty on the Secretary of State to review the movement in average earnings for the purposes of Orders under sections 148A and 148AA.

7.40 Paragraphs (3) and (4)(b) of Article 2 ensure that where the deceased dies over state pension age, the calculation of the inheritable AP includes any up-rating increases to reflect price inflation that occurred in the interval between the deceased reaching that

[10] See, for example, S.I. 2015/187.
[11] AP accrues at 10% on earnings above the low earnings threshold up to the upper accrual point (£40,040 in 2015/16)
[12] See S.I. 2015/185 and S.I. 2015/186.
[13] Section 51 of the Social Security Contributions and Benefits Act, which provides for Category B pensions in such cases, was substituted by Schedule 12 to the Act omitting a reference to Schedule 4B which sets out the flat-rate amount calculation.

age and their death, as would be the case if the Category A pension were actually in payment to the deceased in that period.[14]

Amendments to do with the new state pension system

7.41 The remaining provisions made by the Order are mainly consequential amendments that extend various existing arrangements to the new state pension.

7.42 Article 2(2) relates to the calculation of a person's "starting amount" – the comparison of their state pension under the old and new rules based on their National Insurance contributions up to 5 April 2016. The amendment ensures that where a person is awarded National Insurance credits after April 2016 in respect of a period of parental or caring responsibility falling before that date, the credits can be included in the calculation of their old-rules valuation. This mirrors the equivalent provision for other types of National Insurance credits made by paragraph 3(7) of Schedule 1 to the Act.

7.43 Article 4 amends Schedule 4 to the Scotland Act 1998 to preserve the position that an Act of the Scottish Parliament cannot modify a rule of Scots private law where it concerns the sharing of state pension scheme rights on divorce or dissolution of a civil partnership. The amendment ensures this position is maintained in respect of shareable rights under the new state pension, that is, where the person whose state pension is subject to a share order is in the new state pension and the divorce or dissolution proceedings begin on or after 6 April 2016.

7.44 Article 5 amends section 17 of the Social Security Contributions (Transfer of Functions, etc.) Act 1999. Section 17 enables Her Majesty's Revenue and Customs (HMRC) to make decisions about entitlement to National Insurance credits on behalf of the Secretary of State. The Act creates a new power (subsection (5ZA) of section 22 of the Social Security Contributions and Benefits Act) to make regulations setting out when people may qualify for National Insurance credits for the purposes of entitlement to the new state pension. The effect of the amendment is simply to extend HMRC's decision-making function to include decisions on those credits.

7.45 Article 6 amends sections 8 and 9 of the Finance (No.2) Act 2005 which set out how lump-sum payments from deferring the state pension, including inheritable lump-sum payments, are treated for income tax purposes. The amendment inserts a reference to a lump-sum payment of inheritable graduated retirement benefit which will be payable under new regulation 19 of the State Pension Regulations (see paragraph 7.13 above). This ensures that the same tax arrangements will apply to such lump sums as apply to all other lump-sum deferral payments.

7.46 Article 7 amends section 14 of the Pensions Act 2008. Part 1 of that Act introduced a duty on employers to automatically enrol their employees in a pension scheme. Section 14 requires the Secretary of State to review in each tax year the level of earnings needed to trigger automatic enrolment and the band of earnings from which the pension contributions are made. Among the factors he can currently take into account in the review is the rate of the basic state pension: the amendment extends this to include the full rate of new state pension.

7.47 The amendment of the Equality Act 2010 made by Article 8 is to ensure that the exception to the sex equality rule in occupational pensions contained in paragraph 4 of Schedule 7 to that Act also applies where the member of the occupational scheme

[14] Additional pension in payment is currently increased in line with any increase in the Consumer Prices Index over the 12 month period ending on 30th September.

will be entitled to a new state pension. Paragraph 4 allows an exception to the general rule that occupational pension schemes must treat men and women equally. The exception relates to what is commonly known as a "bridging pension". This arrangement typically means that where the scheme member retires before state pension age, the tax regime allows their occupational pension to be paid at a higher rate initially and then reduced when their state pension becomes payable.

7.48 The exception allows a different amount of occupational pension to be paid to a man who has not reached state pension age but would have done so had he been a woman. This difference is permissible only to the extent that it is attributable to the difference in male and female state pension ages. As women's state pension age does not reach male state pension age until November 2018, it is necessary to include the new state pension in this exception rule.

Consolidation

7.49 Informal consolidated text of instruments is available to the public free of charge via 'The Law Relating to Social Security' (Blue Volumes) on the Department for Work and Pensions website at http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/ or the National Archive website legislation.gov.uk. An explanation as to which instruments are maintained on each site is available from http://www.dwp.gov.uk/docs/lawvolnews.pdf.

8. Consultation outcome

8.1 The Social Security Advisory Committee considered the state pension provisions in the Regulations and raised no issues about the proposals.[15] The proposed amendments in the Order which amend non–DWP legislation were shared with, and agreed by, other Government Departments and, in relation to the amendment of the Scotland Act 1998, the Scottish Government.

8.2 The proposals for reforming the state pension were subject to extensive consultation. Two options for reform were outlined in a Green Paper in 2011.[16] Around three-quarters of the 102 organisations that responded supported the proposals for a single-tier pension (now called the new state pension). The detailed proposals were published in a draft Bill in January 2013 and submitted for pre-legislative scrutiny by the Work and Pensions Select Committee (WPSC), alongside the White Paper and impact assessment. The Committee received representations from a number of individuals and organisations on the proposal to retain the existing policy on up-rating the state pension overseas. In its report published on 4th April 2013, the Committee stated that "the introduction of the single-tier pension presents an opportunity" to remove what it described as the anomaly of uprating in some countries but not others, but noted that doing so would only apply to people reaching pension age in the new scheme.[17] As this was not a formal recommendation the Government did not specifically address this issue in its response. However, the Government considers that uprating only the new state pension while continuing the existing policy for those already over pension age before that date would not be appropriate as it would mean treating state pension recipients differently with respect to up-rating policy based on their age. For the

[15] The regulations were referred to the Committee for informal consideration, as the statutory duty to refer does not apply where the regulations are made within 6 months of the enabling powers coming into force. The Order was not referred as it does not implement new policy and is also exempt from the statutory requirement to refer.
[16] The Green Paper *A state pension for the 21st century* (Cm. 8053) was published in April 2011.
[17] http://www.publications.parliament.uk/pa/cm201213/cmselect/cmworpen/1000/1000.pdf pages 39 and 40

reasons outlined at paragraph 7.16 above there are no plans to change the current policy.

8.3 The provision made by regulation 6 of the Regulations was consulted on as part of the formal public consultation on the legislative changes needed as a result of ending contracting-out for salary-related schemes. The 8 week consultation ran from 8 May to 2 July 2014. Meetings with key stakeholders were held to consider issues raised in the responses. There were no comments or concerns about the provision made by regulation 6. The Government's response to the consultation is published on gov.uk.[18]

9. Guidance

9.1 A multi-channel communications campaign for the new state pension began in November 2014, including radio and digital advertising, press, social media stakeholder engagement and direct mail. Communications activity focussed on increasing understanding of specific aspects of the transition to the new scheme, including the inheritance provisions and the effect of past periods of contracting-out in calculating an individual's new state pension, began in September 2015. There is also extensive information about the changes on gov.uk, including a toolkit for external stakeholder organisations which was published in November 2014 and since updated with new material.

9.2 Individuals aged 55 and over can currently obtain a statement based on the new rules that gives them an estimate of the weekly rate of state pension their National Insurance contributions to date would provide. A new online service will be rolled out in 2016, which will provide a projection of a person's new state pension at state pension age. This will be available to anyone under state pension age.

9.3 A comprehensive set of learning materials and supporting guidance has been developed for all staff involved in providing state pension statements and processing claims and changes to awards, coupled with a programme of classroom-based training. There is also dedicated resource centre on the Department's intranet site containing bulletins, factsheets and briefing which all staff can access to familiarise themselves with the changes.

9.4 In relation to regulation 6 of the Regulations (occupational pensions), Her Majesty's Revenue and Customs, in collaboration with the Department for Work and Pensions, is updating online guidance for schemes and pension administrators for use from April 2016. In addition, a telephone advice line services will be available for pension scheme administrators and managers.

10. Impact

10.1 The state pension provisions have no impact on business or civil society. The provision relating to occupational pensions (regulation 6 of the Regulations) re-enacts existing arrangements for protecting previously-accrued rights and therefore does not impose any new burdens on individuals or business or generate any savings.

10.2 The public sector impact consists of implementation costs and benefit expenditure arising from the state pension reforms. The costs of implementing the measures in these Instruments cannot be separately identified within the overall cost of delivering

[18] https://www.gov.uk/government/consultations/occupational-pension-schemes-abolition-of-defined-benefit-contracting-out

the state pension reforms.[19] The benefit expenditure impact of the measures in these Instruments is negligible: see paragraph 7.14 in relation to GRB inheritance and paragraphs 7.22 to 7.24 in relation to the calculation of benefits following deferral overseas. As the provisions relating to up-rating the new state pension overseas continue the pre-existing policy, they generate no additional benefit cost or saving (see paragraphs 7.15 to 7.17 above).

10.3 An Impact Assessment has not been prepared for this instrument as no impact on the private or voluntary sector is foreseen. The impact of the introduction of the new State Pension and the abolition of contracting-out are considered in the Impact Assessment for the new State Pension, updated in July 2014[20]. Copies of the Impact Assessment are available in the libraries of both Houses of Parliament. Copies may also be obtained from the Better Regulation Unit of the Department for Work and Pensions, 2D, Caxton House, Tothill Street, London SW1H 9NA.

11. Regulating small business

11.1 The legislation, apart from regulation 6 of the Regulations, does not apply to activities that are undertaken by small businesses.

11.2 Regulation 6 does not place any additional burden on small business.

12. Monitoring & review

12.1 The Department regularly publishes a range of statistics on pensioner incomes and pensioner poverty which are used to monitor trends and inform policy development. Administrative data on new state pension awards will be published on the DWP tabulation tool and be used to monitor the impact of the reforms in conjunction with survey data.

12.2 In relation to regulation 6 of the Regulations (occupational pensions), it is not appropriate to make statutory provision for a review of this provision in this Regulation. This is because the purpose of regulation 6 is simply to ensure continuity of the existing arrangements for protecting previously accrued rights of individuals and does not place any new additional burdens on pension schemes other than to ensure that existing legislation reflects the ending of contracting-out. As such, the cost of conducting a statutory review and monitoring impacts would be disproportionate.

12.3 The Department will continue to work closely with its stakeholders, including industry bodies and employer organisations, in the period following the abolition of contracting-out. Should any issues arise with this arrangement, it will assess the evidence and, if appropriate, consider whether any changes may be necessary.

13. Contact

13.1 Helen Gadd at the Department for Work and Pensions Tel: 020 7449 7142 or email: Helen.Gadd@dwp.gsi.gov.uk can answer any queries regarding the instrument.

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[19] Estimated investment and recurrent cost up to 2022/23 is estimated at £106million at 2015/16 prices. The difference between this figure and he estimate of £380million published in the Impact Assessment is due to a reduction of £67.5 million in IT running costs and the disaggegation of £206.5 million capital and recurrent costs identified for a new online service which is being delivered on a separate timetable. The implementation costs of the digital service are being reviewed and will be available in 2016.

[20] https://www.gov.uk/government/publications/single-tier-pension-updated-impact-analysis-july-2014